UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

345 COURTLAND STREET, N.E.
ATLANTA, GEORGIA 30365

June 13, L994

VIA OVERNIGHT DELIVERY

Mr. Andrew J. Harrison, Jr., Esq.
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
1425 New York Avenue, N.W.
Washington, D.C. 20005

Re: U.S. v. Ben Hardy, et al.; Declaration of Dora Ann Johnson

Dear Mr. Harrison:

Enclosed please find the final original signed copy of the declaration. I hope that the case will go well without any further need of my services, although I am available if the need happens to present itself. Please give me prior warning, due to schedule constraints, if the Department of Justice should require me to travel outside of Atlanta.

Good luck with recovery of the Fund. You may contact me at (404)347-3931 extension 6137 if you have any further questions.

Sincerely,

Dora Ann Johnson

Dora Ann Johnson

Enclosure

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

UNITED STATES OF AMERICA, Plaintiff,	)	
v.	)	Civil Action Nos. 90-0695-L(J) 90-0792-L(A)
BEN HARDY, et al., Defendants.	)	

DECLARATION OF DORA ANN JOHNSON

I, Dora Ann Johnson, declare and state as follows:

1. Unless otherwise indicated, I have personal knowledge of the facts set forth herein and would be competent to testify thereto.

2. I am an On-Scene Coordinator in the Superfund Emergency Response and Removal Branch, Removal Operations Section, for Region IV of the United States Environmental Protection Agency ("EPA" or the "Agency") in Atlanta, Georgia. I have been employed by the EPA in its Region IV office at 345 Courtland Street, N.E., Atlanta, Georgia 30365 since 1987.

3. Beginning in March 1987, I was assigned to work at the Lee's Lane Landfill Superfund Site (the "Site") near Louisville Kentucky, as the backup On-Scene Coordinator to Edward L. Hatcher, the primary On-Scene Coordinator for the Site. I was present at the Site and personally involved in almost all of the response actions at the Site.

4. The Lee's Lane Landfill Site is located adjacent to the Ohio River approximately 4.5 miles southwest of Louisville,

Kentucky. The Site is bordered on the east and south by a flood protection levee. To the northeast is Borden, Inc., a chemical manufacturer. The Louisville Gas & Electric Cane Run Plant, a coal fired generating station, lies to the south of the Site. Riverside Gardens, a residential development, is located to the east of the Site. Beyond these areas, land use is predominantly woodlands and agricultural.

5. Prior to working on the Lee's Lane Site, Edward L. Hatcher and I were working on the A.L. Taylor Site near Louisville, Kentucky. Due to the fact that we were near the Lee's Lane Site, the Agency asked that we go to the Lee's Lane Site to inspect it. When we arrived, we saw that the Ohio River had eroded a large portion of the landfill, exposing drums and other materials to direct contact with humans and the environment. There were also other areas of the landfill where waste materials and drums were exposed without any soil cover. Some areas appeared to contain paint waste, one area was covered with a yellowish crystal powder material and numerous drums containing residual chemical materials which were exposed. We determined that immediate action was required to cover the waste materials to prevent direct exposure to the chemical waste materials. It also appeared that immediate action was required to shore up the river bank to prevent the threat of further erosion of the topsoil, exposing chemical waste materials and other associated landfill debris.

6. Based on the Site inspection and information regarding other Site problems, the Agency concurred with our view that immediate action was required to stabilize the landfill. Initially we undertook to sample the exposed drums, cover drums and other "hot spots" of contamination with soil, post signs and erect a gate to prevent access. The goal was to minimize contaminated runoff from the landfill into the river and surrounding areas and to prevent direct contact with the waste materials to protect human health and the environment. We obtained authorization to proceed with this work and began in March of 1987.

7. Haztech, Inc. (now known as Westinghouse Remediation Services) was one of the EPA contractors that worked at the Site. Haztech had what was known as an Emergency Response Clean-up Services ("ERCS") contract with EPA. Pursuant to this contract, Haztech, or Haztech's subcontractor, performed the physical labor in the course of response actions at the Site, at the direction of the EPA On-Scene Coordinator. Roy F. Weston had what was known as the Technical Assistance Team ("TAT") contract. Pursuant to the TAT contract, Weston performed such functions as documentation of Site activities, performance of air monitoring surveys, performance of sampling surveys, preparation of site safety plans, preparation of sampling plans and general technical assistance as requested by the On-Scene Coordinator. All work at the Site was done at the direction of an EPA On-Scene Coordinator. An On-Scene Coordinator plans and closely

supervises the work that takes place at a Superfund Site. During the relevant period, Haztech submitted information on an almost daily basis regarding time and expenditures involved in each day's activities, such as the identities and costs of personnel, equipment to be used and subcontractor costs. This information was submitted in computer generated forms called 1900-55s that were prepared by Weston. The forms were contemporaneously approved by the On-Scene Coordinator. Once approved by the On-Scene Coordinator, the 1900-55s become the basis for a periodic invoice generated by the contractor and sent to EPA.

8. Weston's invoices were not based on the 1900-55s. Weston had a level of effort contract, pursuant to which the On-Scene Coordinator would assign a task to Weston and approve an allocated amount of time to complete the task. If Weston was unable to complete the task within the allotted hours, it would seek approval from the On-Scene Coordinator for more time. Thus, for Weston, the On-Scene Coordinator supervised and reviewed the work as it progressed. Generally, the On-Scene Coordinator has the duty to closely review all invoices for Site work, to make sure that the billing is accurate and authorized. A contractor would not be paid for work if the On-Scene Coordinator disputes an invoice from a contractor for that work.

9. Exhibit A attached hereto is a true and accurate copy of the Site log book. The Site log book is a journal which contains a documentation of the response activities that occurred in connection with the Site. Log books such as this one are

customarily generated by EPA personnel or EPA contractors on behalf of EPA. TAT personnel make entries in the log book on a daily basis and record all response activities which occurred on that day. EPA's On-Scene Coordinator is responsible for reviewing the log to ensure that the entries accurately reflect actual response activities for each day. The On-Scene Coordinator onsite for that day is responsible for the review of that day's entries. The person that makes entries into the Site Log book does so at or near the time that the recorded events occur and has personal knowledge of the events recorded or the information is transmitted by a person with knowledge. In my experience, log books such as these are regularly made and kept in the course of EPA response actions at a Superfund site.

10. As noted the response actions at the Site first focused on minimizing contaminated surface run-off and direct contact with wastes by covering several "hot spots" and 296 empty and exposed drums scattered on the surface of the Site with borrow soil, but we soon realized that more resources would be necessary to properly stabilize the Site to respond to the environmental threat. We demobilized from the Site at the end of March because the funding authorized for the job would not be sufficient to address all of our concerns.

11. Exhibit B attached hereto is a true and accurate copy of the action memoranda that were used to obtain funding approval. An action memorandum generally is a document describing proposed response actions and seeking authorization to

conduct the response action. In an emergency situation, the On-Scene Coordinator has authorization to incur $50,000 in response costs without further authorization. Included in Exhibit B attached hereto is a true and accurate copy of an action memorandum dated March 10, 1987 that I prepared to obtain the initial funding for the project. In order to obtain more funding to continue response actions at the Site, I prepared a second action memorandum dated June 3, 1987. The second memorandum requested authorization for additional funding to implement further response actions.

12. EPA and Haztech again mobilized to the Site several months later. The log indicates that the remobilization occurred on May 18, 1987. At this point, we dug a series of sixteen (16) test pits. Ebasco Services, Inc., a remedial contractor, took samples from the test pits for analysis in order to determine the boundaries of the landfill and what types of materials we would be dealing with during the course of the work. I recall that samples were taken of the waste, and that the sampling results showed that the test pits contained among other things, lead, arsenic, benzene and chromium. We also tried to identify any additional exposed drums that we had not yet detected.

13. EPA established a command post at the end of Lee's Lane directly adjacent to a flood containment wall to prepare for continued response action at the Site. Ebasco had prepared a design for the river bank stabilization project, but we modified it in the field based on what we observed. We cleared

approximately twenty-six (26) acres of brush and standing timber, sloped a fourteen (14) acre area of the river bank to a known elevation of 440 feet above sea level, and lined the area with sand, filter fabric and rock to protect the bank from eroding during flooding. In the course of grading and sloping of the river bank, debris and excess timber removed from the area were placed in a sink hole (ravine) area within the landfill. The sink hole was later graded and covered with top soil followed by seeding with a mixture of grasses. We also sloped, leveled and covered approximately twelve (12) acres of an area in the middle of the landfill for proper drainage. This area was also seeded to promote grass cover.

14. A drainage ditch located on the western end of the Site, which allows water to runoff in the middle of the landfill towards the river was rebuilt. A new twenty (20) inch diameter culvert pipe was installed and the ditch was lined with shale to ensure proper drainage and to prevent erosion. EPA also hired a contractor to inspect and upgrade a methane gas collection system that had already been installed. The methane gas collection system was necessary to prevent methane gas from collecting at explosive levels. The system that had been installed was not working properly. It had numerous bullet holes in it. The Log indicates that IT Corporation did this work.

15. The Log indicates that on September 25, 1987, the sloping and placement of rock to stabilize the river bank was completed. The approximate depth of the top layer of rock on the

slope was eighteen (18) inches. The Log also indicates that by October 13, 1987, top soil on the area had been seeded with mixed grasses, a steel gate had been erected and installed across the flood containment wall and an eight (8) inch diameter steel barrier had been placed across the Site's access road to limit access to the Site. Then, surveyors with Horne Engineering surveyed six (6) benchmarks known as "Monuments" for reference and determination of river bank slope movement or sliding.

16. In the Fall of 1987, Haztech technicians and a drilling crew from Soil and Material Engineers, Inc. mobilized to the Site for installation of ten (10) gas and two (2) water monitoring wells. Eight (8) gas wells were placed along the flood containment wall and two (2) gas wells were placed in a vacant lot near the landfill. In the Riverside Gardens neighborhood, two (2) water wells were also placed in residential lots. The Log indicates that the drilling of the wells was completed on October 29, 1987.

17. Thereafter, representatives with Park Aerial Surveys came to the Site to mark, label and grid the hot spot areas and Monuments.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 10, 1994.

Dora Ann Johnson

Dora Ann Johnson